

# DEPARTMENT OF REGULATORY AGENCIES

## Division of Insurance

### 3 CCR 702-4

#### LIFE, ACCIDENT AND HEALTH

##### Amended Regulation 4-2-27

#### PROCEDURES FOR REASONABLE MODIFICATIONS TO INDIVIDUAL AND SMALL GROUP HEALTH BENEFIT PLANS

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Definitions
Section 5	Rules
Section 6	Notice and Disclosure of Reasonable Modifications
Section 7	Severability
Section 8	Enforcement
Section 9	Effective Date
Section 10	History

#### **Section 1 Authority**

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109, 10-16-109, 10-16-105.1(6), C.R.S. and § 10-16-201.5(8)(b), C.R.S.(2012).

#### **Section 2 Scope and Purpose**

The purpose of this regulation is to establish procedures for the submission of reasonable modifications to grandfathered individual and small group health benefit plans, as outlined in § 10-16-201.5(8), C.R.S. (2012), and for individual and small group non-grandfathered health benefit plans, as outlined in § 10-16-105.1(5), C.R.S.

#### **Section 3 Applicability**

This regulation applies to any carrier intending on making reasonable modifications to an individual or small group health benefit plan.

#### **Section 4 Definitions**

- A. "Reasonable modification" means, for the purpose of this regulation, an alteration to the benefits of a health benefit plan that is fair and reasonable under the circumstances. The Division of Insurance (Division) determines if a modification is fair and reasonable.
- B. "PPACA" or "ACA" means, for the purposes of this regulation, The Patient Protection and Affordable Care Act, Pub, L. 111-148 and the Health Care and Education Reconciliation Act of 2010, Pub, L. 111-152.

#### **Section 5 Rules**

- A. Requirements for Reasonable Modifications

1. Timing and Submission: The proposed benefit modification change request must be submitted via SERFF in the form of a letter to the Commissioner and policyholders at least ninety (90) days prior to the effective date of the modification.
2. The Rates and Forms Section of the Division will no longer accept reasonable modifications submitted by paper. Only SERFF filings will be accepted unless there is a compelling reason that such a reasonable modification can only be filed in a paper format.
3. Carrier Specific: A separate filing must be submitted for each carrier. A single filing, which is made for more than one carrier or for a group of carriers, is not permitted. This applies even if a product is comprised of components from more than one carrier, such as an HMO/indemnity point-of-service plan.
4. Required Information: A-cover letter, side-by-side comparison of the benefit change(s), an identification of the rating impact of each benefit change and a copy of the policyholder notification.
  - a. Side-by-Side Comparison: Each filing must include a "side-by-side comparison" identifying the proposed change(s). The "side-by-side comparison" should include three columns:
    - (1) The first column containing a description of the current benefit, including form number, if applicable;
    - (2) The second column containing the proposed benefit change(s); and
    - (3) The third column containing the amount of the rating impact for each of the proposed change(s).

All changes to the rates must be filed separately in accordance with all rating laws and regulations once the Division and the carrier have resolved all issues.
  - b. All carriers shall submit a cover letter to the Commissioner which contains the following:
    - (1) A complete explanation of what the carrier is proposing to do;
    - (2) The effective date of the proposed modification;
    - (3) The market type of the plan being modified (i.e., individual, small group, or both);
    - (4) Whether the plan is a grandfathered plan or a non-grandfathered plan;
    - (5) The form numbers and plan identification code, as appropriate, for the forms and plans to be modified; and
    - (6) The number of groups and members affected by the modification.
  - c. If the modification is determined by the Division to be reasonable, and all outstanding issues have been resolved, the filing will be approved via SERFF. All rates under the approved modification must be filed separately in SERFF in accordance with all existing rating laws and regulations. If the modification is determined to be unreasonable, it will be disapproved via SERFF.

- d. Rate Filing: Submit a separate rate filing that shall discuss or provide the following:
  - (1) The impact on rates for each of the requested modifications as well as and the overall impact on rates for the entire product;
  - (2) A narrative stating how each of the rating changes was determined; and
  - (3) A signed certification that the methodology used to determine the rates for these benefit modifications is consistent with the methodology used by the carrier to price similar products.
- e. Rate filings require a separate forms filing that contains the following pursuant to § 10-16-107.2, C.R.S., Colorado Insurance Bulletin B-4.18, and with Colorado Insurance Regulation 4-2-39, and must include:
  - (1) The signed forms certification; and
  - (2) The new forms listing to include the effective date of the modified form.

**B. Losing Grandfathered Status**

- 1. Removal of an existing benefit is generally not considered to be a reasonable modification. However, the Division may determine, on a case-by-case basis, if the removal of an existing benefit is reasonable after reviewing the supporting documentation. If the removal is not found to be a reasonable modification, the associated plan would lose its grandfathered status.
- 2. Making a change to a grandfathered plan that would cause a grandfathered plan to lose its grandfathered status includes, but is not limited to:
  - a. Adding or changing of an overall annual dollar limit on all benefits by adding a limit to a plan that, on March 23, 2010, did not have an overall lifetime or annual dollar limit on all benefits;
  - b. Reducing the dollar amount of the annual limit; or
  - c. Reducing the overall lifetime dollar limit on all benefits that was in place on March 23, 2010.
- 3. A change to a grandfathered plan that changes the cost sharing and/or the actuarial value of an existing policy is not considered a reasonable modification.
- 4. Any modification to a grandfathered, non-ACA compliant, plan in order to bring it into compliance with the requirements of the ACA and create an ACA-compliant product will not be considered a "reasonable modification."

**Section 6 Notice and Disclosure of Reasonable Modifications**

The policyholder notification shall be provided no later than ninety (90) days prior to renewal of each policyholder's benefit plan. It shall provide the policyholder an opportunity to purchase any other health benefit plan offered by the carrier in that specific market. A copy of this notification must be provided to the Division as part of the benefit modification filing. A reasonable modification does not qualify as an event that results in a special enrollment period.

## **Section 7      Severability**

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation shall not be affected.

## **Section 8      Enforcement**

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

## **Section 9      Effective Date**

This regulation shall become effective on January 1, 2014.

## **Section 10     History**

Regulation effective January 1, 2005.  
Amended regulation effective May 1, 2010.  
Amended regulation effective January 1, 2014.